

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4979 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AADAMBHAI JAN MAHMAD

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 4979 of 1984
MS KUSUM M SHAH for Petitioner
MR K.C.SHAH, ASSISTANT GOVERNMENT PLEADER for
the respondents

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/06/96

ORAL JUDGEMENT

The petitioner has challenged the judgment and order passed in revision on 16.5.1984 by respondent no.4- State of Gujarat confirming the order of the Collector, Banaskantha in appeal no. 95/83 dated

15.10.1983 and also the order of the Deputy Collector, Palanpur in case No.12 of 1983 dated 20.2.1983.

The petitioner is found to have committed breach of the terms of grant of new tenure land in dispute. Respondent No.2 Deputy Collector, Banaskantha, Palanpur by his order dated 20.2.1983 in case No. 12 /83 found that agricultural properties bearing survey No. 298/4 admeasuring 2 acres-15 gunthas and 298/2 admeasuring 1 acre- 3 gunthas are transferred in violation of grant of new tenure land. Notice under Section 7 of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('Fragmentation Act' for short) came to be withdrawn by the impugned order of the Deputy Collector. The disputed land came to be forfeited to the Government on the ground of transfer of land contrary to new tenure condition and without permission of the authority. It is mentioned in the impugned order of the Deputy Collector that notices were given for breach of provisions of the Fragmentation Act and also for violations of the terms and conditions of grant of new tenure land. The order of the Deputy Collector came to be questioned by the petitioner in appeal No. 95/83 before the Collector, Banaskantha which came to be dismissed on 15.10.1983. The petitioner, therefore, filed a revision under Section 211 of the Bombay Land Revenue Code before respondent No.3-State of Gujarat which also came to be dismissed on 16.4.1994. Hence, this petition under Articles 226/227 of the Constitution of India.

The respondent-authorities have passed the impugned orders on the ground of illegal transfer of the disputed land in violation of grant of new tenure land and without permission of the competent authority, while dropping the notice for breach of provisions of the Fragmentation Act.

The first contention raised on behalf of the petitioner is that there was no notice for alleged breach of the terms of grant of new tenure land. The notice as at Annexure A is for wrongful act alleged in breach of Sections 7 and 8 of the Fragmentation Act and not for sale of new tenure land without permission from the Collector. From the record, it does not appear that notice for unauthorised sale of new tenure land without permission from the Collector was given to the petitioner or the concerned parties. All the authorities below have failed to appreciate this aspect which has resulted into manifest illegality and failure of principles of natural justice. The learned Assistant Government Pleader could not show from the record that such notice was ever given

or served to the petitioner or the concerned parties. Failure to give notice on this count is ipso facto sufficient to hold that there is violation of principles of audi alteram partem. The impugned order of the deputy Collector which came to be confirmed in appeal and the revision suffers from the vice of failure to observe the principles of natural justice. Therefore, the impugned orders are required to be quashed and the matter is required to be remanded to the Deputy Collector, Palanpur -respondent No.2 for fresh inquiry after giving appropriate notice to the petitioner and the concerned parties and then to proceed with the inquiry in accordance with law.

In the result, the impugned orders as at Annexures B,C and D are quashed and set aside and the matter is remanded to respondent No.2- Deputy Collector, Palanpur for holding fresh inquiry after giving appropriate notice to the petitioner and the concerned parties and then to proceed in accordance with law, as early as possible. Petition is, therefore, allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

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